UNITED STATES DISTRICT COURT FOR THE DISTRICT OF VERMONT

DAVID WAYNE BARRON, :

.

Plaintiff

:

v. : File No. 1:09-CV-209

:

ANDREW PALLITO, PRISON HEALTH

SERVICES, INC., DELORES

BURROUGHS-BIRON, BALLARD,

GARRY WEISCHEDEL, RANDY PORTER,:

THERESA STONE, KEVIN JENKINS,

JODY BERRIER, MENTAL HEALTH

MANAGEMENT, INC.,

:

Defendants

ORDER

The Magistrate Judge's Report and Recommendation was filed May 4, 2010. (Paper 44.) After <u>de novo</u> review and absent objection, the Report and Recommendation is AFFIRMED, APPROVED and ADOPTED. <u>See</u> 28 U.S.C. § 636(b)(1).

Defendant Weischedel's motion to dismiss (Paper 38) is GRANTED. Plaintiff shall be allowed 20 days to amend his claims against Dr. Weischedel to comply with the requirements of the Federal Rules of Civil Procedure. The Court notes Plaintiff filed a Second Amended Complaint on May 19, 2010 (Paper 46) in response to an earlier Order of the Court. (Paper 43.)

Defendant Mark Hatcher's motion to dismiss (Paper 33) is DENIED as moot.

Defendant Hatcher was dismissed from the case and terminated as a party pursuant to the Court's Order filed April 2, 2010. (Paper 43.)

This matter is returned to Magistrate Judge John M. Conroy for further proceedings.

It is further certified that any appeal taken <u>in forma pauperis</u> from this Order would not be taken in good faith because such an appeal would be frivolous. <u>See</u> 28 U.S.C. § 1915(a)(3).

SO ORDERED.

Dated at Brattleboro, in the District of Vermont, this 28th day of May, 2010.

/s/ J. Garvan Murtha

Honorable J. Garvan Murtha Senior United States District Judge